

**REMARKS**

The Office Communication dated December 16, 2008 indicates that the Amendment filed on November 10, 2008 is not fully responsive to the prior Office Action because Applicant did not address the obviousness-type double patenting rejection.

However, as indicated in the Office Action dated May 14, 2008, the obviousness-type double patenting rejection is a “provisional” rejection because the reference relied on is a copending application.

Applicants respectfully submit that Applicants are not required to address a “provisional” obviousness-type double patenting rejection if the claims are also rejected on other grounds. A provisional obviousness-type double patenting rejection is merely a “potential” double patenting problem that can be raised if a copending application would raise an issue of double patenting if one of the applications became a patent. MPEP § 804(I)(B). The merits of a provisional rejection “can” be addressed, but it is not required by the Applicant to address the rejection. MPEP § 804(I)(B).

Applicants also note that if the “provisional” obviousness-type double patenting rejection is the only remaining rejection in the present application, then the obviousness-type double patenting rejection could possibly be withdrawn because the cited application was filed on the same day as the present application.

The MPEP states:

If both applications are filed on the same day, the examiner should determine which application claims the base invention and which application claims the improvement (added limitations). The ODP rejection in the base application *can be withdrawn without a terminal*

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*disclaimer*, while the ODP rejection in the improvement application cannot be withdrawn without a terminal disclaimer.

MPEP § 804(I)(B)(1), emphasis added.

Applicants will consider filing a terminal disclaimer once all other rejections have been withdrawn and the provisional obviousness-type double patenting rejection is the only remaining rejection in the application.

Applicants request consideration of the Remarks in the Amendment filed November 10, 2008 which are fully responsive to the rejection under 35 U.S.C. § 103 in the Office Action dated May 14, 2008.

Applicants submit that the claims, as amended in the Amendment filed November 10, 2008, are in condition for allowance. Applicants request such action at an early date.

If the Examiner believes that this application is not now in condition for allowance, the Examiner is requested to contact Applicants' undersigned attorney to arrange for an interview to expedite the disposition of this case.

If this paper is not timely filed, Applicants respectfully petition for an appropriate extension of time. The fees for such an extension or any other fees that may be due with respect to this paper may be charged to Deposit Account No. 50-2866.

Respectfully submitted,

**WESTERMAN, HATTORI, DANIELS & ADRIAN, LLP**



Andrew G. Melick  
Attorney for Applicants  
Registration No. 56,868  
Telephone: (202) 822-1100  
Facsimile: (202) 822-1111

AGM/adp